

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

X

TIMOTHY REIF and DAVID FRAENKEL,
as Co- Executors of the
ESTATE OF LEON FISCHER and
MILOS VAVRA,

Index No. _____

Plaintiffs,

SUMMONS

-against-

RICHARD NAGY, RICHARD NAGY Ltd.,
Artworks by the Artist Egon Schiele known as
WOMAN IN A BLACK PINAFORE, and *WOMAN
HIDING HER FACE*

Basis of Venue: CPLR 508, 509

Basis of Jurisdiction: CPLR 301, 302

Defendants.

X

To The Defendants Named Above:

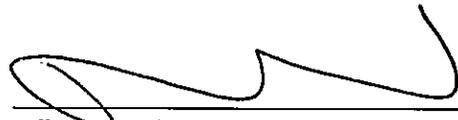
YOU ARE HEREBY SUMMONED to answer the attached Verified Complaint in this action, and to serve a copy of your verified answer, or if the Verified Complaint is not served with this Summons, to serve a notice of appearance on the Plaintiffs' counsel, Dunnington Bartholow & Miller LLP, at the address set forth below within twenty (20) days after the service of this Summons (not counting the day of service itself), or within thirty (30) days after service is complete if this Summons is not delivered personally to you within the State of New York.

PLEASE TAKE FURTHER NOTICE that should you fail to answer or appear, a judgment will be entered against you by default for the relief in the Verified Complaint together with the costs and disbursements of this action.

Dated: New York, New York
November 16, 2015

DUNNINGTON BARTHOLOW & MILLER LLP
Attorneys for Plaintiff

By: _____



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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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TIMOTHY REIF and DAVID FRAENKEL,
as Co- Executors of the
ESTATE OF LEON FISCHER and
MILOS VAVRA,

Index No. _____

Plaintiffs,

VERIFIED COMPLAINT

-against-

RICHARD NAGY, RICHARD NAGY Ltd.,
Artworks by the Artist Egon Schiele known as
WOMAN IN A BLACK PINAFORE, and *WOMAN
HIDING HER FACE*

Jury Trial Demanded

Defendants.

X

Plaintiffs, by and through their counsel, DUNNINGTON BARTHOLOW & MILLER
LLP, hereby complain of the Defendants as follows:

PRELIMINARY STATEMENT

1. This is an action for conversion, replevin and for violations of New York General Business Law § 349 commenced by the heirs of Franz Friedrich (“Fritz”) Grunbaum to recover two paintings by Egon Schiele entitled *Woman In A Black Pinafore* and *Woman Hiding Her Face* (the “Artworks”).
2. The Nazi regime stole the Artworks from Fritz Grunbaum while he was imprisoned, tortured and ultimately murdered, in the Dachau Concentration Camp.
3. The Artworks are unique chattels as defined by CPLR 7109(a). Therefore injunctive relief is expressly authorized.
4. The Artworks are currently in New York County in the possession of Defendants Richard Nagy, an art dealer, and Richard Nagy, Ltd. a company owned by Mr. Nagy.

5. The Artworks are presently being offered for sale in New York at the Salon Art + Design Show at the Park Avenue Armory being produced by Sanford L. Smith & Associates (the “Show”).

THE PARTIES

6. Plaintiffs are co-heirs of the estate of Franz Friedrich (“Fritz”) Grunbaum, a Viennese Jewish cabaret performer (born in Brno, Moravia) who was arrested by the Gestapo on March 22, 1938, imprisoned in the Dachau Concentration Camp, despoiled of all of his property by the Nazi regime, and murdered in Dachau on January 14, 1941.

7. On July 16, 1938, Grunbaum was forced to sign a power of attorney in the Dachau Concentration camp permitting his wife Elisabeth to liquidate his assets and hand the assets over to the Nazi regime. A true copy of the power of attorney (“Vollmacht”) is annexed hereto as **Exhibit “A”**.

8. From 1938 to 1939, Elisabeth was forced to liquidate Fritz’s assets pursuant to Nazi decrees.

9. On Grunbaum’s death, a Vienna notary certified that Fritz had no property.

10. On October 5, 1942 Elisabeth was deported to the Maly Trostinec death camp in Minsk.

11. Pursuant to an amended Certificate of Heirship issued by the District Court Innere Stadt Vienna dated September 12, 2012, Fischer was declared an heir of Fritz Grunbaum’s estate entitled to an undivided fifty percent (50%) share. A true copy of the Certificate of Heirship is annexed hereto as **Exhibit “B”**.

12. Pursuant to an amended Certificate of Heirship issued by the District Court Innere Stadt Vienna dated September 12, 2012, Milos Vavra (“Vavra”) was declared an heir of Fritz Grunbaum’s estate entitled to an undivided fifty percent (50%) share.

13. Plaintiffs Timothy Reif and David Fraenkel are co-executors of the estate of Leon Fischer (“Fischer”) and residents of the United States.

14. Fischer died on August 16, 2013.

15. Pursuant to a last will and testament dated February 2012, Fischer appointed Reif and Fraenkel as executors of his estate.

16. Letters testamentary issued to Reif and Fraenkel and Fischer’s will was duly probated.

17. During his lifetime, Fischer searched diligently for Grunbaum’s art collection.

18. Vavra is a resident of the Czech Republic.

19. Defendant Richard Nagy is, upon information and belief, a resident and citizen of the United Kingdom.

20. Defendant Richard Nagy Limited is a private company limited by shares with a headquarters located at 1 Lumley Street Mayfair, London, United Kingdom W1K 6TT. A true copy of Richard Nagy Limited’s 2015 annual return filed with the United Kingdom’s Companies House is annexed hereto as **Exhibit “C”**.

21. Defendants *Woman In A Black Pinafore* and *Woman Hiding Her Face* are presently located in New York and are being sued herein as *in rem* defendants.

FACTS

22. On April 26, 1938, the Nazi regime declared all Jewish property in excess of 5,000 Reichsmarks ("RM") to be available to the Nazi Reich for Fieldmarshall Goering's Four Year Plan to build the Nazi war machine.

23. The April 26, 1938 decree required all Jews with property in excess of 5,000 RM to declare their assets quarterly until the assets were gone or until the Jews left the Reich.

24. In 1938, the Nazis forbade Vienna's Jews to sell art.

25. While Grunbaum was in Dachau in 1938, a Nazi official named Franz Kieslinger inventoried Fritz's art collection for the Dorotheum.

26. A true copy of Fritz Grunbaum's July 16, 1938 Jewish Property Declaration, which includes the Kieslinger Inventory is attached hereto as **Exhibit "D"**.

27. The Kieslinger Inventory was found in Vienna probate records attached to Jewish property declarations filed by Elisabeth Grunbaum on behalf of her and Fritz.

28. The Dorotheum was a Nazi-controlled auction house in Vienna which was used by the Nazi regime to sell art plundered from Jews and turn the proceeds over to the Nazi Reich.

29. The Kieslinger Inventory shows Grunbaum's art collection to be valued at 5,791 RM.

30. Grunbaum's art collection contained eighty-one works by the artist Egon Schiele.

31. Elisabeth Grunbaum's Jewish Property Declaration of June 1939 shows that all of her property had been taken by the Nazis. A true copy of Elisabeth's Jewish Property Declaration is annexed hereto as **Exhibit "E"**.

32. The stamps “Erledigt” and “Gesperrt” were official Nazi stamps indicating that the property of the Jew in question had been spoliated.

33. Both the Jewish Property Declarations of Fritz and Elisabeth bore “Erledigt” and “Gesperrt” stamps.

34. Because the art collection was inventoried and described in the Jewish Property Declarations, the “Erledigt” and “Gesperrt” stamps are proof positive that the Nazis stole Fritz Grunbaum’s art collection.

35. In November and December 1938, surrounding the Kristallnacht pogrom, the Nazis passed additional laws to steal Jewish property and to forbid Jews from engaging in property transactions without Nazi approval.

36. One of the laws provided for “Aryan” trustees to be appointed to liquidate Jewish property.

37. All proceeds from sales or transfers of Jewish property went to the Nazi Reich, with commissions to the Aryan trustees.

38. Some time prior to January, 1939, Vienna attorney Ludwig Rochlitzer was appointed Aryan trustee of the “property of the Grunbaums”. See **Exhibit “F”**, true copy of a letter from Rochlitzer announcing his appointment as Aryan trustee for the Grunbaum property.

39. From the time of Rochlitzer’s appointment as Aryan trustee, neither Fritz nor Elisabeth had access to the Fritz’s art collection.

40. Grunbaum never voluntarily abandoned his art collection during his lifetime.

41. Grunbaum’s heirs have diligently investigated and pursued his art collection.

42. Images of artworks suspected or known to have been stolen from Fritz Grunbaum have been listed on www.lostart.de and on the blog Art Stolen From Fritzgrunbaum.

<https://artstolenfromfritzgrunbaum.wordpress.com/>

43. On Friday, November 13, 2015, David D'Arcy, a reporter for *The Art Newspaper* contacted Raymond J. Dowd, counsel for the Grunbaum heirs.

44. D'Arcy informed Dowd that two works by Egon Schiele that had belonged to Fritz Grunbaum were being displayed by art dealer Richard Nagy at the Show and that the Show would close on November 15, 2015. (It has since been learned that the Show is to close on November 16, 2015).

45. Dowd sent an investigator to confirm that Nagy was offering the stolen Artworks for sale at the Show.

46. The investigator confirmed that the Artworks stolen from Grunbaum, as listed on www.lostart.de, were being displayed by Nagy at the Show. See **Exhibit "G"**.

47. On Friday, November 13, Dowd emailed Nagy demanding the return of the two artworks. A copy of the demand is attached hereto as **Exhibit "H"**.

48. As described in Exhibit G, *Woman In A Black Pinafore* belongs to Fritz Grunbaum.

49. A photograph of *Woman In A Black Pinafore* is attached hereto as **Exhibit "I"**.

50. As described in Exhibit F, *Woman Hiding Her Face* belongs to Fritz Grunbaum.

51. A photograph of *Woman Hiding Her Face* is attached hereto as **Exhibit "J"**.

52. Upon information and belief, *Woman In A Black Pinafore* and *Woman Hiding Her Face* are extremely valuable and likely to be valued in excess of five million dollars.

53. Based on the foregoing, the estate of Leon Fischer is entitled to an undivided fifty-percent interest in *Woman In A Black Pinafore* and *Woman Hiding Her Face*.

54. Based on the foregoing, Milos Vavra is entitled to an undivided fifty-percent interest in *Woman In A Black Pinafore* and *Woman Hiding Her Face*.

CAUSES OF ACTION

AS AND FOR A FIRST CAUSE OF ACTION – CONVERSION (Against Richard Nagy and Richard Nagy, Ltd.)

55. Plaintiffs repeat and reallege the foregoing paragraphs as if set forth herein.

56. As set forth above, *Woman In A Black Pinafore* and *Woman Hiding Her Face* (“the Artworks”) were stolen from Fritz Grunbaum while he was in the Dachau Concentration Camp.

57. Under New York law, where a chattel is stolen, no one taking from a thief can take good title.

58. New York uses a “demand and refusal” rule for calculating statutes of limitations for actions relating to stolen property.

59. Under New York law, a claim for conversion arises when a true owner makes a demand for the return of stolen property from a possessor and the possessor refuses to return the property.

60. The true owner has three years from the date of refusal to sue for conversion.

61. The Artworks belonged to Fritz Grunbaum and thus Plaintiffs have the present right of possession to the Artworks.

62. Plaintiffs duly demanded the return of the Artworks as of November 13, 2015.

63. Defendants have failed to respond and/or refused to return the Artworks.

64. Accordingly, this claim for conversion is timely.

65. Under New York law, a plaintiff asserting conversion may recover the stolen chattel through a replevin action together with reasonable costs and attorneys fees related to recovery.

66. In the alternative, if the chattel cannot be returned, New York law provides monetary damages as a remedy.

67. Accordingly, Plaintiffs respectfully request an order directing the return of the Artworks.

68. In the alternative, if the works cannot be returned or if Defendants have spirited the Artworks out of the jurisdiction, Plaintiffs respect monetary damages in the amount the Artworks are valued, but not less than five million dollars, together with reasonable attorneys' fees and the costs of this action.

**AS AND FOR A SECOND CAUSE OF ACTION – NEW YORK GEN. BUS. LAW 349
(Against Richard Nagy and Richard Nagy, Ltd.)**

69. Plaintiffs repeat and reallege the foregoing paragraphs as if set forth herein.

70. New York Gen. Bus Law § 349(a) declares that “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.”

71. New York Gen. Bus Law § 349(h) provides for a private right of action and expressly authorizes the Court to “enjoin such unlawful act or practices.”

72. Defendant is representing that it has good title to the Artworks and offering them for sale in New York even though they are on notice that the Artworks were stolen from Fritz Grunbaum.

73. The foregoing constitutes a deceptive act or practice directed to consumers in New York that is causing harm to Plaintiffs.

74. Accordingly, Plaintiff requests a preliminary and permanent injunction requiring the return of the Artworks and (or in the alternative, if the Artworks cannot be returned or if Defendants have spirited the Artworks out of the jurisdiction) monetary damages, including treble damages as authorized by statute, in the amount the Artworks are valued, but not less than five million dollars, together with reasonable attorneys fees and the costs of this action.

**AS AND FOR A THIRD CAUSE OF ACTION – DECLARATORY JUDGMENT
(Against All Defendants)**

75. Plaintiffs repeat and reallege the foregoing paragraphs as if set forth herein.

76. CPLR 3001 authorized the Court to enter a declaratory judgment where a justiciable controversy exists regardless of whether other relief is available.

77. A justiciable controversy exists concerning the ownership of the Artworks that only the Supreme Court may determine.

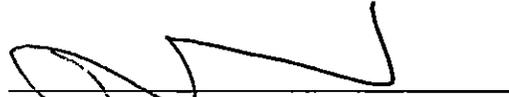
78. Therefore, Plaintiffs request a declaratory judgment that the Artworks are the property of Plaintiffs.

WHEREFORE, Plaintiffs demand judgment (1) on their first cause of action providing for the return of the Artworks or, in the alternative, damages in an amount to be determined at trial but in no event less than five million dollars; (2) on their second cause of action providing for the return of the Artworks and damages in an amount to be determined at trial, plus treble damages, costs and attorneys' fees; (3) on their third cause of action, a declaratory judgment that Plaintiffs own the Artworks; along with (4) an award of costs, fees and attorneys' fees as well as (5) any such other and further relief the Court deems jus, proper and equitable.

Dated: New York, New York
November 16, 2015

DUNNINGTON BARTHOLOW & MILLER LLP
Attorneys for Plaintiff

By:



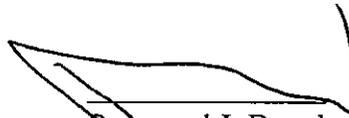
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VERIFICATION

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

I am the attorney for plaintiffs in this action. I declare subject to penalties of perjury that the foregoing complaint is true to my own knowledge, except as to matters therein stated on information and belief and as to those matters I believe it to be true. The grounds of my belief as to all matters not stated upon my knowledge are the file pertaining to this matter and other writings furnished to me by plaintiffs. This Verification is not made by Plaintiffs because they are located outside of the county in which my law office is located.

Dated: New York, New York
November 16, 2015


Raymond J. Dowd